

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telecommunications Relay Services)	CC Docket No. 98-67
And Speech-to-Speech Services for)	
Individuals with Hearing and Speech)	
Disabilities)	

**PETITION FOR RECONSIDERATION OF
NATIONAL VIDEO RELAY SERVICE COALITION**

Claude L. Stout
Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910

Paul O. Gagnier
Eliot J. Greenwald
Michael P. Donahue
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007

*Counsel to
Telecommunications for the Deaf, Inc.*

Cheryl Heppner
Vice Chair
Deaf and Hard of Hearing
Consumer Advocacy Network
3951 Pender Drive, Suite 130
Fairfax, VA 22030

Nancy J. Bloch
Chief Executive Officer
National Association of the Deaf
814 Thayer Avenue
Silver Spring, Maryland 20910-4500

Andrew J. Imparato
President & CEO
American Association of People with Disabilities
1629 K Street, N.W., Suite 503
Washington, DC 20006

Lois Maroney
President
Association of Late Deafened Adults, Inc.
c/o Deaf & Hearing Connection
7545 83rd Street North
Seminole, FL 33777

Paul J. Singleton
Board of Directors Member at Large
Deaf and Hard of Hearing in Government
6200 Windward Place
Bethesda, Maryland 20816

Edward Kelly, Chair
California Coalition of Agencies Serving
the Deaf and Hard of Hearing, Inc.
OC DEAF
6022 Cerritos Avenue
Cyprus, CA 90630

Tawny Holmes
President
Student Body Government
Gallaudet University
800 Florida Avenue, NE
Washington, D.C. 20002

Dated: October 1, 2004

Angela Jones
President
Registry of Interpreters for the Deaf, Inc.
333 Commerce Street
Alexandria, VA 22314

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SUMMARY

The National Video Relay Service Coalition seeks reconsideration of the Commission's decision to not authorize compensation from the Interstate TRS Fund for non-shared language translation services in connection with Video Relay Service ("VRS") conversations between users of American Sign Language ("ASL") and individuals who speak Spanish. The Commission's decision fails to recognize that ASL is not English — ASL is its own language. As a result, the Commission's decision fails to take into account the fact that VRS by its very nature requires a translation between ASL and a spoken language. There is essentially no difference in what is required to provide ASL-to-English VRS and ASL-to-Spanish VRS. In other words, unlike traditional TRS, which provides a conversion between the typed and spoken word, and would be a value-added service in instances where the typed and spoken words are in two different languages, VRS must always provide a translation between ASL and a spoken language, whether the spoken language is English or Spanish. Hence, ASL-to-Spanish VRS is not a value added service.

Latinos comprise a significant portion of the population of the United States. Yet, the Commission's refusal to provide TRS Fund reimbursement for ASL-to-Spanish VRS prevents Hispanic people who are deaf or hard of hearing from having telephone conversations with people in their own community and is thus a denial of the functionally equivalent communications services required by the Section 225 of the Communications Act. Many Puerto Ricans who are deaf or hard of hearing use ASL. As a result, the decision produces particularly absurd results in Puerto Rico, where the predominant language is Spanish, yet the TRS fund would not provide compensation for VRS calls between a Puerto Rican using ASL with someone speaking Spanish.

Lastly, the decision cuts off Hispanic children who are deaf or hard of hearing from having telephone conversations within their own community. Hispanic children who are deaf or hard of hearing are taught ASL and thus require ASL-to-Spanish VRS in order to have access to functionally equivalent communication services.

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The National Video Relay Service Coalition (the “Coalition”), pursuant to Section 1.429 of the Federal Communications Commission’s (“Commission”) Rules,¹ hereby petitions for reconsideration of the Commission’s decision in its June 10, 2004 Report and Order² to not authorize compensation from the Interstate Telecommunications Relay Service (“TRS”) Fund for non-shared language translation in connection with Video Relay Service (“VRS”) conversations between users of American Sign Language (“ASL”) and individuals who speak Spanish. The functional equivalency mandate of Section 225 of the Communications Act³ dictates that Latino individuals with a speech or hearing disability be able to communicate in Spanish with Spanish speaking individuals.

¹ 47 C.F.R. § 1.429.

² *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order, Order on Reconsideration and Further Notice of Proposed Rulemaking, CC Docket No. 90-571, CC Docket No. 98-67, CG Docket No. 03-123, FCC 04-137 (rel. June 10, 2004) (“*TRS Report and Order*”).

³ 47 U.S.C. § 225.

I. The Coalition Member Organizations

The National Video Relay Service Coalition is an *ad hoc* group that includes the following organizations: Telecommunications for the Deaf, Inc. (“TDI”), Deaf and Hard of Hearing Consumer Advocacy Network (“DHHCAN”), National Association of the Deaf (“NAD”), The Association for Late Deafened Adults (“ALDA”), the American Association of People with Disabilities (“AAPD”), Deaf and Hard of Hearing in Government (“DHHIG”), the California Coalition of Agencies Serving the Deaf and Hard of Hearing (“CCASDHH”), the Student Body Government of Gallaudet University (“SBG”), and the Registry of Interpreters for the Deaf, Inc. (“RID”).

TDI is a national advocacy organization that seeks to promote equal access in telecommunications and media for the 28 million Americans who are deaf, hard-of-hearing, late-deafened, or deaf-blind so that they may attain the opportunities and benefits of the telecommunications revolution to which they are entitled.⁴ TDI believes that only by ensuring equal access for all Americans will society benefit from the myriad skills and talents of persons with disabilities.

⁴ TDI educates and encourages consumer involvement regarding legal rights to telecommunications accessibility; provides technical assistance and consultation to industry, associations, and individuals; encourages accessible applications of existing and emerging telecommunications and media technologies in all sectors of the community; advises on and promotes the uniformity of standards for telecommunications technologies; works in collaboration with other disability organizations, government, industry, and academia; develops and advocates national policies that support accessibility issues; and publishes “The GA-SK” quarterly news magazine and the annual *Blue Book, TDI National Directory & Resource Guide for Equal Access in Telecommunications and Media for People Who Are Deaf, Late-Deafened, Hard-of-Hearing or Deaf-Blind*.

DHHCAN, established in 1993, serves as the national coalition of organizations⁵ representing the interests of deaf and/or hard of hearing citizens in public policy and legislative issues relating to rights, quality of life, equal access, and self-representation. DHHCAN also provides a forum for proactive discussion on issues of importance and movement toward universal, barrier-free access with emphasis on quality, certification, and standards.

Established in 1880, the NAD is the nation's oldest and largest constituency organization safeguarding the accessibility and civil rights of 28 million deaf, hard of hearing, late deafened, and deaf-blind Americans in a variety of areas, including education, employment, health care, and telecommunications. A private, non-profit organization, the NAD is a dynamic federation of state associations and organizational affiliates and direct members. Primary areas of focus include grassroots advocacy and empowerment, captioned media, deafness-related information and publications, legal rights technical assistance, policy development and research, and youth leadership development. The NAD works closely with deafness related national organizations and is a member of several coalitions representing the interests of deaf, hard of hearing, late deafened, and deaf-blind individuals.

AAPD is a national non-profit membership organization promoting political and economic empowerment for all children and adults with all types of disabilities. AAPD has a

⁵ The member organizations of DHHCAN include the American Association of the Deaf-Blind (AADB), the American Deafness and Rehabilitation Association (ADARA), the Association of Late-Deafened Adults (ALDA), the American Society for Deaf Children (ASDC), the Conference of Educational Administrators of Schools and Programs for the Deaf (CEASD), Communication Service for the Deaf (CSD), Deaf Seniors of America (DSA), Gallaudet University, Gallaudet University Alumni Association (GUAA), National Association of the Deaf (NAD), National Black Deaf Advocates (NBDA), National Catholic Office of the Deaf (NCOD), Registry of Interpreters for the Deaf (RID), Telecommunications for the Deaf Inc.(TDI), USA Deaf Sports Federation (USADSF), and The Caption Center/WGBH.

strong interest in accessible communications so that people with disabilities can participate fully in all aspects of society.

Formed in Chicago, Illinois in 1987, ALDA works collaboratively with other organizations around the world serving the needs of late-deafened people. Through its chapters and groups around the country, ALDA promotes public and private programs designed to alleviate the problems of late-deafness and for reintegrating late-deafened adults into all aspects of society. ALDA also provides educational information concerning issues affecting late-deafened adults, as well as advocacy on behalf of, and support for, late-deafened adults and their families and friends.

DHHIG is a national nonprofit organization addressing the needs and concerns of deaf and hard of hearing Government employees. Its purpose is to support full communication access, advancement, and retention of deaf and hard of hearing employees in Government, and dismantling communication barriers in the workplace.

CCASDHH was established in 1988 and incorporated as a nonprofit statewide membership organization. Its members include eight nonprofit community-based organizations providing various social services “of by and for” deaf and hard-of-hearing Californians -- NorCal Center on Deafness; Greater Los Angeles Agency on Deafness; Deaf Counseling, Advocacy and Referral Agency; Deaf Community Services of San Diego; Deaf and Hard of Hearing Services; Center on Deafness: Inland Empire; Orange County Deaf Equal Access Foundation and Tri-County GLAD; and the California Association of the Deaf, a statewide membership organization representing deaf and hard-of-hearing consumers.

On an annual basis, CCASDHH’s member agencies ensure that a variety of social services are available serving over 300,000 deaf and hard of hearing individuals regardless of

where they live throughout all 58 counties in California. Through its member agencies' diverse workforce, including Native American, Hispanic, Asian, Russian, Hmong, and African-American individuals who are deaf or hard of hearing, CCASDHH works hard to improve the quality of lives of Californians who are deaf or hard of hearing and who otherwise would not have full access to such services as telecommunications, education, certified sign language interpreters, parent-to-parent support for newborns identified with a hearing loss, literacy, employment development, and advocacy. Member agencies and the California Association of the Deaf were the primary forces in state legislation that established the TTY equipment distribution program and the California Relay Service, long before the Americans with Disabilities Act was passed. As direct service providers, CCASDHH member agencies have the pulse of the community they serve to best determine needs and priorities.

SBG, Gallaudet University was established in 1948. Even though there were other organizations that provided numerous opportunities for leadership, personal growth and development, and fellowship for the Gallaudet student body, there was still a need for a single venue from which the students can formally maintain relations with the University administration. Thus, SBG was established as a representative group to advocate for campus policy changes. Structured via three functional branches - executive, judicial, and legislative, the SBG remains a strong entity on campus with biweekly Student Congress meetings and daily Executive Branch and Judicial Branch operations. Their past achievements include the successful Deaf President Now movement in 1988, management changes in the student infirmary, protests for better TV and movie captioning, and the establishment of the Rathskellar/Abbey.

The philosophy of RID is that excellence in the delivery of interpretation and transliteration services among people who are Deaf or Hard of Hearing and people who are hearing will ensure effective communication. As the professional association for interpreters and transliterators, the RID serves as an essential arena for its members in their pursuit of excellence.

II. The Commission Should Reverse its Decision to Not Authorize TRS Reimbursement for ASL-to-Spanish Video Relay Services.

The Commission declined to authorize TRS Fund reimbursement for non-shared language TRS services, including VRS, solely on the grounds that non-shared language TRS is equivalent to a “value-added” translation service and thus exceeds the functional equivalency requirements.⁶ This determination as it applies to VRS has several critical flaws that warrant reversal.

First, the Commission overlooks the fact that any VRS call involves some level of translation. VRS by its very nature provides a translation between ASL and a spoken language, currently only English. This is not the same as traditional TRS, where there is no translation--the operator converts spoken and typed English. ASL has its own grammatical structure and syntax and is not English just like British Sign Language is not ASL⁷ and is not English.⁸ In fact, ASL has been formally recognized as a “foreign language” by states and universities across the country.⁹ Thus, even in the context of a VRS call that involves an English speaker, VRS requires

⁶ *TRS Report and Order* at ¶¶ 55-61, 139.

⁷ While ASL is used by the majority of VRS users today, it is only one of hundreds of signed languages used around the world, each of which has its own distinct and complex grammatical structure and none of which is identical to spoken English or other language.

⁸ As discussed below, in Puerto Rico, where the predominant spoken language is Spanish, many people who are deaf or hard of hearing use ASL.

⁹ Goddard, Tracy, *White Paper on ASL-Spanish VRS*.

a translation between ASL and English. Significantly, the Commission acknowledges that it has already authorized TRS translation between individuals who speak English and those who use ASL in order to achieve functional equivalency.¹⁰ There is no fundamental difference between providing an ASL-English translation and an ASL-Spanish translation, nor has the Commission provided any reasonable basis for distinguishing between these two types of translation. Indeed, given the growing number of Spanish speaking Americans, functional equivalency requires such translation.

Second, the Commission's comparison of non-shared language VRS to a traditional translation service is misplaced. A traditional translation service enables speaking callers of different nationalities or backgrounds to communicate via a traditional voice call. Such translation would not be required for speaking callers of the same nationality who would be able to speak to one another in their native language. In contrast, persons with speech or hearing disabilities may not be able to communicate at all with speaking callers, even those of the same nationality, including their own family members, without the availability of VRS. Thus, in the context of a VRS call, translation from ASL to the speaking caller's native language is not a value added service, but an essential element of the communication.

Third, in concluding that non-shared language translation is a valued added service for hearing parties,¹¹ the Commission inappropriately focuses on the benefits that non-shared language translation provides to hearing callers rather than how it benefits VRS users, which is the focus of the functional equivalency requirement for people who are who are deaf or hard of

¹⁰ *TRS Report and Order*, at ¶ 56 (citing *Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Report and Order and Further Notice of Proposed Rulemaking, CC Docket No. 98-67, FCC 00-56, at ¶¶ 44-46 (2000) ("*First Improved TRS Order*").

¹¹ *TRS Report and Order*, at ¶ 61.

hearing. Contrary to the Commission's characterization, the primary issue in this proceeding is whether the availability of ASL-to-Spanish VRS will promote the ultimate goal of the Americans with Disabilities Act ("ADA") of integrating persons with speech and hearing disabilities into American society. Accordingly, the Commission's focus should be on whether non-shared language translation enables persons with speech or hearing disabilities to obtain access to telecommunications service that is functionally equivalent to that available to all speaking persons.

During consideration of the ADA in Congress, Senators Harkin and McCain highlighted the essential goal of the ADA to enable persons with speaking or hearing disabilities to have greater control over their lives.¹² To further this goal, the Commission should be taking steps to enhance, rather than reduce, the ability of the deaf and hard-of-hearing to communicate with Americans who speak Spanish. One such step is authorizing reimbursement for ASL-to-Spanish translation. Unfortunately, in refusing to require such reimbursement, the Commission downplays the significance of an individual being able to speak to family and friends in their native language. In doing so, the Commission severely limits the ability of these individuals to improve their independence, and productivity.

III. Refusing to Authorize Reimbursement for ASL-to-Spanish VRS Translation is Inconsistent with the Commission's Prior Actions to Expand the Availability of Telecommunications Services to the Growing American Latino Population.

Since 1990, the Latino population has grown at a rate of 57.9% compared to the national average of 13.2%,¹³ and this pace is expected to continue. In fact, the U.S. Census Bureau

¹² See News Release, Tom Harkin of Iowa, "Opening Statement of Senator Tom Harkin, Subcommittee on the Handicapped, Hearing on the Americans with Disabilities Act of 1989" (May 10, 1989); 136 Cong. Rec. No. 89 (daily ed. July 13, 1990) (statement of Senator John McCain).

¹³ About the Latino Community – 20 Questions available at

projected that there would be 61 million Latinos in the U.S. by 2025, comprising 18.2% of the U.S. population.¹⁴ Given the substantial growth of the Latino population in the last decade, it is not surprising that Latinos are now the largest minority in the U.S. Moreover, Spanish is the second most used language in the country and the predominant language in Puerto Rico. The Commission has responded to this fact in a number of ways that would be consistent with authorization of ASL-to-Spanish VRS.

Most significantly for this proceeding, the Commission has already required Spanish-to-Spanish interstate relay services noting that “[t]he number of Spanish speaking persons is significantly larger than any other non-English speaking population and is rapidly growing.”¹⁵ Given this conclusion, the Commission’s refusal to extend VRS translation to the Spanish speaking population warrants reconsideration.

The Commission has also included specific requirements for Spanish language television programming in its closed captioning rules, but has not expanded these requirements to include other non-English language programming based upon the size and rapid growth of the Spanish speaking population.¹⁶ Notably, the Commission explained its decision in part on the fact that its captioning rules applied to programming in Puerto Rico.¹⁷

www.nclr.org/content/faqs/detail/396.

¹⁴ *Id.*

¹⁵ *First Improved TRS Order*, at ¶ 30.

¹⁶ *Closed Captioning and Video Description, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility*, Order on Reconsideration, MM Docket No. 95-176, FCC 98-236, at ¶ 95 (1998).

¹⁷ *Id.* at n. 312.

English has never been recognized as the official language of the United States. Rather, English is the most frequently spoken language in the continental United States, and Spanish is the second most frequently spoken language in the continental United States. In addition to being spoken by substantially more people than any other non-English language in the United States, Spanish is distinguished by the fact that it is the predominant language spoken in Puerto Rico, whose population is larger than many states and is the largest of the United States territories. In Puerto Rico, many of the Hispanic people who are deaf or hard of hearing use ASL. Therefore, the Commission's refusal to authorize ASL-to-Spanish VRS translation leads to the absurd result that in Puerto Rico, Hispanic people who are deaf or hard of hearing using ASL must have their VRS conversations translated into English, a language that is either not spoken or is a second language for most Puerto Ricans.

Finally, the Commission's own website contains a Spanish language home page providing information about its rules and regulations and numerous links to information regarding telephone, television, radio, cable and satellite issues in Spanish. As the Commission's extensive efforts to date to make services and information available to the Latino population demonstrate, there is sufficient demand to make ASL-to-Spanish translation available to persons with speech or hearing disabilities.

IV. ASL-to-Spanish VRS Translation is Especially Critical for Latino Children who are Deaf or Hard of Hearing.

According to a recent report, as many as 24.5% of all deaf and hard-of-hearing school aged children (ages 3 and up) are Latino.¹⁸ In fact, the Commission acknowledged in the *TRS*

¹⁸ *TRS Report and Order*, at 57, n. 198 (citing Schildroth & Hotto, "Changes In Student and Program Characteristics," *American Annals of the Deaf*, 141(2), 68-71 (1996), published in *Hispanic Outlook in Higher Education*, May 2000, Jean F. Andrews, Ph.D. & Donald L. Jordan, Ph.D. Lamar University, Beaumont, TX).

Report and Order that Latino children are the fastest growing minority population among deaf school aged children in the United States.¹⁹ These children are subject to unique circumstances that make the availability of non-shared language VRS translation essential to their ability to communicate with family, friends, and other speaking members of their community.

The Commission has also recognized that “ASL becomes the first language for many of these Hispanic youths because it is the first language that is fully accessible to them, even though ASL is not the primary language used in their home.”²⁰ Because these students are educated in ASL and written English, they do not learn Spanish in the schools they attend, and many are too young to type or use TRS. At the same time, many of these children’s family members have not or cannot learn ASL in order to communicate in the child’s native language. Thus, unlike Spanish speaking and other hearing children who are able to communicate easily with their relatives and friends over the telephone, and unlike children who are deaf or hard of hearing growing up in English speaking homes who can use VRS for English-ASL translation, Latino children who are deaf or hard of hearing have no method to communicate by telephone with their relatives and friends because VRS does not provide Spanish-ASL translation. Consequently, there is a significant gap in communications between Latino children and their families precisely because the children are deaf or hard-of-hearing. The only way to bridge this gap and the only way in which these children can communicate with their speaking relatives is through non-

¹⁹ 2002-03 Regional and National Survey, Gallaudet Research Institute, available at http://gri.gallaudet.edu/Demographics/2003_National_Summary.pdf.

²⁰ *TRS Report and Order*, at ¶ 57 n. 197 (citing Schildroth & Hotto, “Changes In Student and Program Characteristics,” *American Annals of the Deaf*, 141(2), 68-71 (1996), published in *Hispanic Outlook in Higher Education*, May 2000, Jean F. Andrews, Ph.D. & Donald L. Jordan, Ph.D. Lamar University, Beaumont, TX).

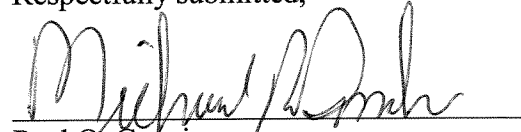
shared language VRS. To these children, the only functionally equivalent service is ASL-to-Spanish VRS.

V. Conclusion

VRS by its very nature is a translation service. It provides translation between ASL and a spoken language. Because of the substantial, growing Spanish speaking population in the United States, ASL-to-Spanish VRS provides unique benefits to individuals who are deaf and hard of hearing in this large segment of the population. Moreover, because many of these individuals cannot communicate at all with hearing callers without VRS, non-shared language translation in the case of VRS is not a value-added service, but a critical element of functionally equivalent service. Accordingly, for the reasons set forth above, the National Video Relay Service Coalition respectfully requests the Commission to (1) reconsider its decision to not authorize TRS reimbursement for ASL-to-Spanish VRS translation and (2) order that providers of Spanish VRS translation services be compensated for the costs of providing those critical services to the substantial population that relies upon them.

Claude L. Stout
Executive Director
Telecommunications for the Deaf, Inc.
8630 Fenton Street, Suite 604
Silver Spring, MD 20910

Respectfully submitted,



Paul O. Gagnier
Eliot J. Greenwald
Michael P. Donahue
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W.
Washington, D.C. 20007
Tel: (202) 424-7500
Fax: (202) 424-7643
Counsel to
Telecommunications for the Deaf, Inc.

Cheryl Heppner
Vice Chair
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